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मामला क्रमांक G.A. 1147/03 and 1254/ सन् 2003

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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**Criminal Appeal No.1147 of 2003**

APPELLANT:
(In Jail)

Sukhiram, Son of Panchuram Raot, aged 28 years, Cultivator, R/o Village: Dumariya, P.S.: Gandai, Distt. Rajnandgaon (C.G.)

- Versus -

RESPONDENT:

State of Chhattisgarh, Through: P.S. Sahaspur Lohara, Distt. Kawardha (At present – Kabirdham) (C.G.)

{Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973}

AND

**Criminal Appeal No.1254 of 2003**

APPELLANT:
(In Jail Custody)

Gambhir Ram, S/o Budhuram Rauat aged about 31 years, Occupation: Cultivator, R/o Village: Dumriya, P.S.: Gandai, Distt. Rajnandgaon (C.G.)

- Versus -

RESPONDENT:

State of Chhattisgarh, Through: P.S. Sahaspur (Lohara), Distt. Kawardha (Present Kabirdham) (C.G.)

{Criminal appeal under Section 374 (2) Cr.P.C.}

**Division Bench:**

**Hon'ble Mr. L.C. Bhadoo and**
**Hon'ble Mr. Dhirendra Mishra, JJ.**

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आदेश पत्रक (पूर्वानुबद्ध)

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**18-7-2007**

Mr. Suryakant Mishra, counsel for the appellant in Cr.A.No.1147/2003.

Mr. V.P. Gupta, counsel for the appellant in Cr.A.No.1254/2003.

Mr. Sudhir Bajpai, Deputy Govt. Advocate for the State/respondent.

Oral judgment dictated on Dais.

**L.C. Bhadoo, J**: -

Criminal Appeal No.1147/2003 filed by accused Sukhiram and Criminal Appeal No.1254/2003 filed by accused Gambhir Ram are being disposed of by this common judgment, as both these appeals are arising out of the same judgment dated 2-9-2003 passed by the Additional Sessions Judge (Fast Track Court), Kawardha in Sessions Trial No.16/2000.

These appeals are directed against the judgment of conviction and order of sentence dated 2nd September, 2003, passed by the Additional Sessions Judge (Fast Track Court), Kawardha in Sessions Trial No.16/2000, whereby learned Additional Sessions Judge after holding accused/appellants Sukhiram & Gambhir Ram guilty for commission of offence under Section 394 of the I.P.C. sentenced each of them to undergo R.I. for ten years and pay a fine of Rs.200/-, in default of payment of fine to further undergo R.I. for six months. In addition to that, learned Additional Sessions Judge also convicted accused Sukhiram under Section 302 of the I.P.C. for committing the murder of Suklia Bai, and sentenced him to undergo imprisonment for life and pay a fine of Rs.200/-, in default of payment of fine to further undergo R.I. for six months. Further, learned Additional Sessions Judge acquitted accused Gambhir Ram of charge under Section 302 of the I.P.C. and accused Somlal & Banshi of charge under Section 414 of the I.P.C.

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Case of the prosecution, in brief, is that on 29-9-1999 at about 12 noon, Bhagwantin Bai (PW-2) and her mother-in-law Suklia Bai (since deceased) went to bring vegetables from their kitchen garden at Village: Ranidahra. The said kitchen garden was at some distance, adjacent to the forest, from the residence of Suklia Bai & Bhagwantin Bai. At that time, accused Sukhiram & Gambhir Ram came in the kitchen garden. Suklia Bai enquired from them as to who are they and why they have come there, then the accused persons disclosed that they are hunters. Sickle of Bhagwantin Bai was lying on the roof of hut which was picked up by accused Gambhir Ram, he started chiseling the handle of axe with the sickle and thereafter, he kept the sickle at the same place. Thereafter, the accused persons caught Bhagwantin Bai & Suklia Bai, closed their mouths and took each of them to opposite side. Accused Gambhir Ram took Bhagwantin Bai, whereas, accused Sukhiram took Suklia Bai. Bhagwantin Bai heard the cries of her mother-in-law and thereafter, Sukhiram also came to the side where Bhagwantin Bai and accused Gambhir Ram were present. They took Bhagwantin Bai inside the forest where they committed rape on her turn by turn. Bhagwantin Bai saw Sutia (a form of necklace) of Suklia Bai in the hands of accused Sukhiram. After committing rape, the accused persons left Bhagwantin Bai at Village: Bhendra Nawagaon. They also snatched the Anthi from Bhagwantin Bai and after leaving her they ran away. Bhagwantin Bai disclosed everything to the villagers. In the mean time, when Bhagwantin Bai & Suklia Bai did not return to their house, Fatteram (PW-3), husband of Bhagwantin Bai & son of Suklia Bai, started searching the whereabouts of his wife and mother. He came to the kitchen garden in search of them and saw that his mother was lying dead, however,

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आदेश पत्रक (पूर्वानुबद्ध)

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Bhagwantin Bai was not there, therefore, he informed the villagers of his village: Ranidahra. Ultimately, in the morning of 30th September, 1999, Fatteram reported the matter against unknown person in Police Station: Sahaspur Lohara and his report (Ex.P-3) was registered as Crime No.117/99 under Section 302 of the I.P.C. On a search being made, Bhagwantin Bai was found at Village: Bhendra Nawagaon. Thereafter, Bhagwantin Bai disclosed about the incident.

Rajesh Devdas (PW-13), Assistant Sub Inspector, reached on the spot, prepared the site plan and seized blood stained soil & plain soil under Ex.P-5 from the place of occurrence. After giving notice Ex.P-6 to the Panchas, he prepared inquest Ex.P-6A on the body of Suklia Bai. Panchnamas Exs.P-8 & P-9 were prepared on the basis of the information given by accused Gambhir Ram & Sukhiram, respectively. One axe and clothes of accused Gambhir Ram were seized under Ex.P-10 by Sub Inspector Ajay Mishra. One axe and clothes of accused Sukhiram were also seized by Sub Inspector Ajay Mishra under Ex.P-11. Accused Sukhiram gave memorandum Ex.P-11A regarding Sutia (a form of necklace) of Suklia Bai and Anthi of Bhagwantin Bai. Accused Gambhir Ram gave memorandum Ex.P-12 regarding the sale of Sutia through one Somlal. Sutia and register were seized by Assistant Sub Inspector Rajesh Yadav on 26-10-1999 from Vishal Emporium on being produced by Ashish Kumar under Ex. P-13. The Sutia was put to identification before Naib Tehsildar R.K. Kripal (PW-7) and the same was identified by Pyarelal (PW-6), husband of deceased Suklia Bai. Body of Suklia Bai was sent for post-mortem examination under Ex.P-18A to Primary Health Centre, Sahaspur Lohara, where Dr. V.K. Shrivastava (PW-9) conducted post-mortem on the body of

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आदेश पत्रक (पूर्वानुबद्ध)

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Suklia Bai, prepared the report Ex.P-18 and opined that the cause of death is coma & shock as a result of injury to brain and extensive haemorrhage in brain due to fracture of skull bone. Seized articles were sent for chemical examination to Forensic Science Laboratory, Raipur under Ex.P-22 from where the report was received, wherein blood was found on the clothes of the deceased, but blood was not found on the axe seized from Sukhiram.

After completion of investigation, charge sheet was filed against the four accused persons namely Sukhiram, Gambhir Ram, Somlal & Banshi viz., against accused Sukhiram & Gambhir Ram under Sections 394 & 302 of the I.P.C. and against accused Somlal & Banshi under Section 414 of the I.P.C., in the Court of Chief Judicial Magistrate, Kawardha, who in turn committed the case to the Sessions Judge, Rajnandgaon, from where learned Additional Sessions Judge (Fast Track Court), Kawardha received the case on transfer for trial.

Prosecution in order to establish charges against the accused persons examined 14 witnesses. Learned Additional Sessions Judge recorded statements of the accused persons under Section 313 of the Cr.P.C. in which they denied the material appearing against them in the prosecution evidence and stated that they are innocent, they have been implicated in a false case.

Learned Additional Sessions Judge, after hearing the arguments of counsel for respective parties, convicted and sentenced the accused persons as aforementioned.

We have heard Mr. Suryakant Mishra, learned counsel on behalf of accused Sukhiram; Mr. V.P. Gupta, learned counsel on behalf of Gambhir Ram; and Mr. Sudhir Bajpai, learned Deputy Govt. Advocate on behalf of the State/respondent.

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**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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As far as the homicidal death of Suklia Bai is concerned, Dr. Vineet Shrivastava (PW-9) has stated in his evidence that he conducted post-mortem on 1-10-1999 on the body of Suklia Bai. There was one lacerated wound in the size of 2 ½" x ½" on the right side of occipital region, bone beneath the injury was broken, brain matter was coming out from the injury and there was excessive haemorrhage. Lacerated wound in the size of 2" x 1" on the right side of occipital region ½" above injury No.1, bone beneath the injury was broken, brain membrane was congested and there was haemorrhage in the brain. He has stated that in his opinion the cause of death was head injury, extensive haemorrhage and shock as a result of the fracture of skull bone and injury to brain. Injuries were ante-mortem in nature and the death was homicidal in nature. His report is Ex.P-18. The seized axe was sent for inspection on which he saw that there was a blood like spot. The injuries found on the head of the deceased could be caused by the said axe. The blood was just like human blood. In view of the above evidence of the doctor, it is established that the death of Suklia Bai was homicidal in nature.

During the course of arguments, it was informed by learned counsel for respective parties that as far as the rape committed on Bhagwantin Bai is concerned, a separate charge sheet was filed against the accused persons.

As far as involvement of the accused persons in committing the murder of Suklia Bai is concerned, there is only one witness namely, Bhagwantin Bai (PW-2), daughter-in-law of deceased Suklia Bai, who was with Suklia Bai and both of them went to collect vegetables from their kitchen garden. Bhagwantin Bai (PW-2) has stated in her evidence that when they reached kitchen garden, just thereafter, accused Sukhiram & Gambhir Ram

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came there. When they enquired from the accused persons as to why they have come there, they said that hunters of that village have called them. Accused Gambhir Ram was wearing a shirt, on which there were stripes, he picked up the sickle lying on the roof of the hut and started chiseling handle of the axe with the sickle and thereafter, he again kept the sickle on the roof of the hut. Thereafter, both the accused persons caught them and closed their mouths. Accused Gambhir Ram caught hold of her, whereas accused Sukhiram caught hold of her mother-in-law. Accused Sukhiram took her mother-in-law towards bushes whereas accused Gambhir Ram took her to the other side. Thereafter, she heard the cries of her mother-in-law 'save save'. Gambhir Ram closed her mouth and forced her to bend. Thereafter, Sukhiram came towards the side where accused Gambhir Ram and she were present. Thereafter, both of them tied her hands & legs with the help of a towel and after lifting her they took her towards river Jhori, they took her in the forest and committed rape on her one by one. She saw silver Sutia (a form of necklace) of her mother-in-law with the accused. They snatched her Anthi also and thereafter, they left her at Village: Nawagaon. In cross-examination defence has not been able to discredit the evidence of this witness that accused Sukhiram had not took Suklia Bai to the other side or that the evidence of this witness is not worth reliance.

From the evidence of Dr. Vineet Shrivastava (PW-9), Suklia Bai met with homicidal death, as there were injuries on her head. Bhagwantin Bai (PW-2) has categorically stated in her evidence that accused Sukhiram took Suklia Bai to other side, whereas accused Gambhir Ram took her on the opposite side, she heard the cries of her mother-in-law 'save save'.

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Therefore, from this evidence, it is established that accused Sukhiram was the only person who committed the murder of Suklia Bai, because when accused Sukhiram took Suklia Bai immediately thereafter, this witness heard the cries of her mother-in-law and thereafter accused Sukhiram immediately came near to accused Gambhir Ram and this witness.

Ajay Mishra (PW-14), Investigating Officer, has stated in his evidence that from accused Sukhiram one axe and his clothes stained with blood were seized under Ex.P-11 which bears his signatures at place from 'B' to 'B'. Ishwar Singh (PW-4) has been examined to prove seizure memo Ex.P-11, but he has not supported the prosecution case. However, from the evidence of Ajay Mishra (PW-14) recovery of axe and clothes is established and there is no reason to disbelieve this recovery. The axe was sent to Dr. Vineet Shrivastava (PW-9) who has stated that he examined the axe and the injury found on the head of Suklia Bai could be caused by the said axe. Therefore, this circumstance also corroborates the fact of committing the murder of Suklia Bai by accused Sukhiram.

Even though an attempt has been made that Sutia (a form of necklace) was seized at the instance of accused Gambhir Ram, same was put to identification parade and was got identified by Pyarelal (PW-6), husband of Suklia Bai, but the prosecution evidence is shaky in this regard, because it has come in the evidence of Pyarelal that the Police got engraved the name of Suklia Bai on that Sutia in order to facilitate identification of the said Sutia by her husband. Therefore, identification of Sutia becomes doubtful. This circumstance cannot be taken into consideration for connecting the accused with the crime in question. Even otherwise, evidence of Bhagwantin Bai (PW-2), medical evidence and recovery of axe

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from the accused establish beyond reasonable doubt that accused Sukhiram was the author of the commission of murder of Suklia Bai and to this extent, we do not find any illegality or infirmity in the judgment of the trial Court.

As far as conviction of accused Sukhiram under Section 394 of the I.P.C. is concerned, recovery of Sutia is doubtful and the same has not been properly identified, therefore, his conviction under Section 394 of the I.P.C. cannot be sustained.

Now, coming to the commission of offence under Section 394 of the I.P.C. by accused Gambhir Ram for looting the Anthi from Bhagwantin Bai is concerned, in the first instance, recovery of Anthi at the instance of accused Gambhir Ram & Sukhiram has not been proved. Even the Anthi has not been got identified by Bhagwantin Bai. Therefore, looting of Anthi from Bhagwantin Bai and recovery of the same from accused has not been established. Even though, she has stated in her evidence that the accused persons looted the Anthi, but the same has not been established because in the first instance, the Anthi was not recovered at the instance of the accused, secondly, recovery of Anthi has not been established and thirdly, the same has not been identified by Bhagwantin Bai. Therefore, conviction of accused persons Sukhiram & Gambhir Ram under Section 394 of the I.P.C. for looting the Anthi from Bhagwantin Bai has not been established beyond reasonable doubt. Hence, their conviction under Section 394 of the I.P.C. cannot be sustained.

In the result,

(i) the appeal of accused Gambhir Ram (Criminal Appeal No.1254/2003) succeeds and he is acquitted of charge under Section 394 of the I.P.C. resultantly, conviction and sentence imposed upon him under

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| | that Section are set aside. He is stated to be in detention since 1999. Therefore, he be set at liberty forthwith, if not required in any other case.<br>(ii) Similarly, conviction and sentence imposed upon accused Sukhiram under Section 394 of the I.P.C. are also set aside and he is acquitted of the said charge. However, conviction and sentence imposed upon him under Section 302 of the I.P.C. for committing the murder of Suklia Bai, are maintained. Criminal Appeal No.1147/2003 is partly allowed.<br>**Sd/-**<br>**L.C. Bhadoo**<br>**Judge** | **Sd/-**<br>**Dhirendra Mishra**<br>**Judge** |
| Soma | | |

GRPRJ — FS/246— 2/2007 — 50,000.